

### **REMARKS**

By the present response, Applicant has amended Claims 1 and 17-48 to further clarify the invention. Claims 49-52 have been cancelled. Claims 1-48 remain pending in the present application. Applicants respectfully request reconsideration and withdrawal of all rejections presented in the Non-Final Office Action, in light of the Amendments and Remarks presented herein.

#### **Claim Objections and Rejections**

Claims 18, 21, 25-27, 29-31, 41-42, 44-48 and 50-52 were objected to due to improper dependencies. Claim 49 was objected to due to the informality discussed in the Office Action.

Claim 13 was rejected under 35 USC 112, second paragraph, due to improper antecedent basis.

Claims 43-48 were rejected under 35 USC 101 as a computer readable medium possibly including a "stream of information."

Claims 1-11 and 15-52 were rejected under 35 U.S.C. § 102 as anticipated by U.S. Patent No. 6,934,748 to Louviere ("Louviere").

Claims 12-14 were rejected under 35 U.S.C. § 103 as being unpatentable over Louviere.

As discussed below, Applicants respectfully submit that claims 1-48, as amended, are proper, recite patentable subject matter and define over the cited art of record. As such, Applicants respectfully submit that all pending claims are allowable.

#### **Claim 18, 21, 25-27, 29-31, 41-42, 44-48 and 50-52, Are Proper**

Regarding the objections to Claims 18, 21, 25-27, 29-31, 41-42, 44-48 and 50-52, the claim dependencies presented herein have been corrected for Claims 17-48 due to a minor oversight. Applicants wish to thank the Examiner for pointing out such oversight.

With respect to the objection to Claim 49, Applicants have cancelled Claims 49-52, which overcomes such objection.

Reconsideration and withdrawal of the objections to Claims 18, 21, 25-27, 29-31, 41-42, 44-48 and 49-52 are respectfully requested.

#### **Claim 13 is Definite**

Regarding the Section 112 rejection of Claim 13, appropriate correction has been made to Claim 13 to overcome the improper antecedent basis contained therein. Reconsideration and withdrawal of the rejection to Claim 13 is respectfully requested.

Claims 43-48 Recites Patentable Subject Matter

With regard to the Section 101 rejection of Claims 43-48, Applicants have amended the specification herein to clarify that the computer readable medium only includes a tangible medium which can contain or store data, such as a computer hard drive, memory, and the like. As such, Claims 43-48, which are directed to such tangible computer readable medium, recite patentable subject matter under 35 USC 101. Reconsideration and withdrawal of the Section 101 rejection to Claims 43-48 is respectfully requested.

Claims 1-11 and 15-48 is Patentably Over Louviere Under 35 U.S.C. § 102

With regard to the Section 102 rejection of Claims 1-11 and 15-48, Applicants respectfully submit that these claims, as amended, define over Louviere.

Louviere is directed to online experimentations of presenting various content arrangements on webpages. Louviere states (emphasis added):

“... systems 10 and 12 may be maintained, managed, and/or operated by a provider 14 of content 15 to user 16. Such content provider can be an entity which operates or maintained a portal or any other website through which content can be delivered.” (See Louviere, column 4, lines 35-39, emphasis added)

“Content 15, which can be stored in digital form, may be broken down or reduced to a set of elemental components. An elemental component can be, for example, a text file, an image file, an audio file, a video file, etc. These elemental components may be combined and/or formatted in a number of different ways or structures for presenting content 15 to users 16.

Each separate combination and/or formatting of content 15 constitutes a content structure or treatment. A content structure can be, for example, a particular implementation of a web page at a given moment. More specifically, at the given instance of time, the web page may contain particular text, icons, images, and/or video located at particular positions on the screen, particular visual background shading or color, particular borders for dividing up the screen, particular audio (music or speech), and the like. ” (See Louviere, column 5, lines 9-. 25)

Accordingly, Louviere only discloses combining and/or formatting elemental components on webpages for presenting content (via different ways/combinations) to users on a webpage (e.g., at the given instance of time, the web page may contain particular text, icons, images, and/or video located at

particular positions on the screen, particular visual background shading or color, particular borders for dividing up the screen, particular audio (music or speech)).

In contrast, Claim 1, as amended, recites

A method to apply different treatments, comprising:  
    defining at least one treatment, wherein the at least one treatment comprises a plurality of different treatments, each of the plurality of different treatments being different from each other;  
    selecting at least one channel, wherein the at least one channel comprises a plurality of different channels, each of the plurality of different channels being different from each other, and wherein each of the at least one channel comprises a specific medium of communication, at least one medium of communication comprising a non-webpage medium; and  
    applying the plurality of different treatments to the plurality of different selected channels such that each different selected channel has a different treatment applied thereto and associated therewith so as to evaluate the impact that each different treatment has to each different, selected channel.

Louviere does not disclose the above recitations of Claim 1. For example, Louviere does not disclose “applying the plurality of different treatments to the plurality of different selected channels such that each different selected channel has a different treatment applied thereto and associated therewith so as to evaluate the impact that each different treatment has to each different, selected channel.” As previously discussed, Louviere only deals with varying content only on webpages. Louviere clearly does not disclose applying different treatments to different channels (e.g., emails, postal mailings, on-hold telephone messages, ATM messages, etc.). Further, Louviere does not disclose “selecting at least one channel . . . .” There is no selection process at all in Louviere.

As such, it is respectfully submitted that Claim 1, as amended, patentably distinguishes over Louviere. Claims 17, 24 and 43 are independent claims that contain recitations similar to that of Claim 1 and are allowable for the same reasons that Claim 1 is allowable. Claims 2-11, 15-16, 18-23, 25-42, and 44-48 are dependent from one of the above independent claims and are allowable for the same reason each base independent claim is allowable. Reconsideration and withdrawal of the 35 U.S.C. § 102 rejection of Claims 1-11 and 15-48 is respectfully requested

Claims 12-14 is Patentably Over Louviere Under 35 U.S.C. § 103

With regard to the Section 103 rejection s of Claims 12-14, it is submitted that these claims contain recitations not disclosed by Louviere. The Office Action acknowledges that Louviere does not disclose “validating a new matrix,” as recited in Claims 12-14. However, the Office Action asserts in a

conclusatory fashion that the recitations of Claim 12 “would have been obvious to one of ordinary skill in the art at the time of the invention to modify Louviere to include validating.” Use of facts beyond what is expressly shown in the prior art must be limited to those which are “capable of such instant and unquestionable demonstration as to defy dispute.” M.P.E.P. § 2144.03(A). Claim 12 is directed to a specific, detailed feature of some embodiments of the invention of validating a new matrix. Neither Louviere nor any cited art discuss or even suggest a matrix, much less validating a new matrix. This concept is not obvious to one skilled in the art. It is impossible to demonstrate this concept instantly and unquestionably without citing any art that teaches it. The Office is required to cite the best possible art to support his contention. M.P.E.P. 2144.03(C).

In light of the above is submitted that Claims 12-14 patentably define over Louviere, and reconsideration and withdrawal of the 35 U.S.C. § 103 rejection of these claims is respectfully requested.

\* \* \* \* \*

**CONCLUSION**

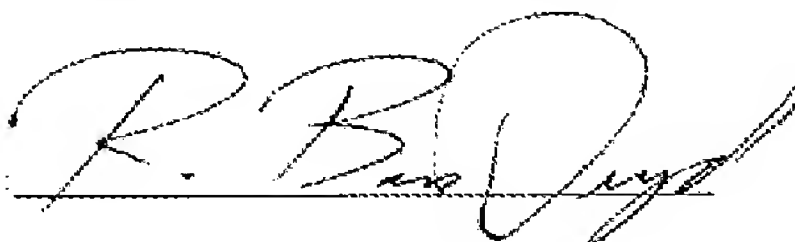
In view of the foregoing Amendments and Remarks, Applicants respectfully submit that all claims of the present application are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. Examiner William A. Brandenburg is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 13-4365.

Respectfully submitted,

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